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In re Application of : Decision On  
Michael L. Rooney : Petition  
Serial Number: 10/757,848 :  
Filed: January 16, 2004 :  
For: Oxygen Scavengers Independent Of Transition :  
Metal Catalysts :

This is a decision on the petition filed July 20, 2007, requesting that the Director exercise supervisory authority to require the Examiner to retract the allegation that Applicant's arguments traversing a restriction requirement is "totally false".

The petition is considered a timely submission under 37 CFR 1.181.

**Issues:**

On October 5, 2006, the Examiner made a restriction requirement and required an election of species.

On December 11, 2006, Applicant elected an invention and a species and traversed the rejection.

On March 8, 2007, the Examiner mailed a Notice of Incomplete Response and responded to applicant's arguments using the term "totally false" to characterize Applicant's argument.

Applicant responded on March 21, 2007 and requested that the Examiner both point out how and why the Applicant's statement would be characterize as being "totally false" or withdraw the accusation. On June 15, 2007, Second Notice of Incomplete response to the Restriction requirement, the Examiner attempted to address the issues as to why the statement " totally false" was used.

**Decision:**

A review of the file history shows that while there may have been a legitimate disagreement as to the reasons for the restriction, it does not rise to the level of using the term " totally false" under the circumstances.

The Examiner is directed to clarify the record via the next office action, that while applicant's arguments traversing the restriction may be unpersuasive, it does not rise to the level of being characterize as being "totally false".

The petition is **GRANTED.**

  
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